

**MARIANNE C. LANUTI, Esq.**  
Nevada Bar No. 007784  
Law Offices of Marianne C. Lanuti  
194 Inveraray Court  
Henderson, Nevada 89074  
(702) 270-2346

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*Attorney for Plaintiffs*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CV-S-05-0009-LDG-LRL

**CESAR and JOCELYN RECIO,  
Guardian et Litem of J. R., minor  
Student.**

**COMPLAINT FOR ATTORNEY FEES  
AND COSTS**

*Plaintiffs.*

VS

CLARK COUNTY SCHOOL DISTRICT.

*Defendant.*

COMES NOW, Plaintiffs, CESAR and JOCELYN RECIO, through their legal counsel, MARIANNE C. LANUTI and hereby files this Complaint For Attorney Fees and Costs pursuant to Title 20 United States Code, Section 1415(i)(3).

**PLAINTIFFS' COMPLAINT FOR ATTORNEYS' FEES AND COSTS**

**MARIANNE C. LANUTI, Esq.**  
Law Offices of Marianne C. Lanuti  
194 Inveraray Court  
Henderson, Nevada 89074

## **PRELIMINARY STATEMENT**

1. This action is brought by CESAR and JOCELYN RECIO, who seek reasonable attorney's fees and costs pursuant to Section 1415(i)(3)(B) of the Individuals with Disabilities Education Act ("IDEA"), Title 20 United States Code Section 1400 et. seq. for expenses incurred in achieving substantial success in issues brought to forth on behalf of their disabled son, J.R.

## **JURISDICTION AND VENUE**

- 9 2. Jurisdiction is conferred upon this Court pursuant to the Individuals with
- 10 Disabilities Education Act (IDEA), Title 20 United States Code Section 1415.
- 11 3. Jurisdiction is also conferred upon this Court by Title 28 United States Code
- 12 Section 1331 which authorizes federal courts to adjudicate disputes arising
- 13 under the constitution and laws of the United States.
- 14 4. Venue is proper in the United States District Court for the District of Nevada
- 15 authorized by Title 28 United States Code Section 1391.

## PARTIES

18 5. Plaintiffs' CESAR and JOCELYN RECIO are citizens of the United States  
19 and residents of the State of Nevada, Clark County and within the Clark  
20 County School District when the claim arose.

21 6. Plaintiffs CESAR and JOCELYN RECIO (hereinafter "Parents") are the  
22 natural Parents of J.R., (hereinafter "Student") a disabled child who is eligible  
23 for special education and related services pursuant to the Individuals with  
24 Disabilities Education Act, Title 20 United States Code Section 1400 *et. seq.*,  
25 and the regulations promulgated thereto, as implemented by the State of  
26 Nevada, Nevada Administrative Code Section 388 *et. seq.*

27 7. Defendant CLARK COUNTY SCHOOL DISTRICT is a local educational  
28 agency as defined in Title 20 United States Code Section 1401, which is  
located in the State of Nevada, Clark County, and is chartered and

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1       incorporated under Nevada law, with the capacity to be sued. CLARK  
2       COUNTY SCHOOL DISTRICT receives federal funds from the United States  
3       Department of Education pursuant to the Individuals with Disabilities  
4       Education Act and is required to provide a free and appropriate public  
5       education in the least restrictive educational environment to all qualified  
6       disabled school-age children whose Parents resides within the District's  
7       boundaries.

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### FACTS

10      8. On or about March 30, 2004, Plaintiffs' submitted a request for an Impartial  
11       Due Process Hearing pursuant to the Individuals with Disabilities Education  
12       Act (IDEA), Title 20 United States Code Section 1415 et. seq.

13      9. Student was entitled to receive special educational services under the  
14       category of autism.

15      10. Plaintiffs' alleged that Defendant failed to provide Student with a free and  
16       appropriate public education during the 2001/2002; 2002/2003 and  
17       2003/2004 school year.

18      11. Plaintiffs' alleged the Defendant committed both procedural and substantive  
19       violations pursuant to Title 20 United States Code Section 1415 et. seq.

20      12. Plaintiffs' allege that the procedural violations included, but not necessarily  
21       limited to, failure to properly evaluate Student across all environments ergo a  
22       deprivation of parental participation in the Individualized Education Plan  
23       (hereinafter, "IEP") in a meaningful manner. (Amanda J. v. Clark County  
24       School District, 260 F.3d 1006 (9<sup>th</sup> Cir. 2001)).

25      13. Plaintiffs' allege that Defendant committed procedural violations during the  
26       2001/2002; 2002/2003 and 2003/2004 school year that resulted in Student's  
27       loss of an educational benefit.

28      14. Plaintiffs' allege that Defendant committed substantive violations pursuant to  
      Title 20 United States Code Section 1415 et. seq.

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### PLAINTIFFS' COMPLAINT FOR ATTORNEYS' FEES AND COSTS

1 15. Plaintiffs' allege that Defendant's substantive violations included, but not  
2 necessarily limited to, failure to provide Student with appropriate  
3 supplementary supports and services. These services include, but not  
4 necessarily limited to, an intensive behavioral home intervention program.

5 16. Plaintiffs' sought as a resolution for this matter, known at the time:  
6 A. An intensive behavioral home intervention program consisting of 30-40  
7 hours per week of applied behavioral analysis (hereinafter, "ABA") plus  
8 monthly workshop consultations by an approved Defendant provider. The  
9 cost for the above mentioned services is approximately \$40, 000 to \$60,000  
10 per year.  
11 B. Reimbursement for expenditures associated with Student's private  
12 placement.  
13 C. Reasonable attorneys' fees and costs.  
14 17. On or about April 5, 2004, Hearing Officer Nilsine Hansen (hereinafter,  
15 "IHO") was appointed by the Nevada Department of Education.  
16 18. On or about April 20, 2004, a prehearing conference was conducted between  
17 the relevant parties. An impartial due process hearing was scheduled to  
18 occur between June 3 through June 15, 2004. Disclosure and witness lists  
19 were scheduled to be exchanged on May 26, 2004.  
20 19. On or about June 22, 2004 the relevant parties commenced discussions for  
21 additional dates for testimony. Additional administrative hearings were  
22 conducted between August 16 through August 20, 2004; September 17,  
23 2004 and November 29, 2004.  
24 20. On or about December 8, 2004, Plaintiff received notification of the "IHO"  
25 decision dated December 6, 2004. Plaintiff prevailed on all three issues and  
26 received the following relief: :  
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PLAINTIFFS' COMPLAINT FOR ATTORNEYS' FEES AND COSTS

1           A. Defendant shall reimburse Plaintiffs \$230.48 for speech/language services  
2           provided at private expense.

3           B. Defendant shall reimburse Plaintiffs \$1,825.00 for speech/language  
4           services provided at private expense..

5           C. Defendant shall reimburse Plaintiffs for an psychological evaluation in the  
6           amount of \$300.00 provided at private expense.

7           D. Defendant shall reimburse Plaintiffs \$1,000.00 for an  
8           evaluation/consultation provided at private expense.

9           E. Defendant will provide a consultant for Plaintiff during the 2004/2005  
10           school year , including extended year services, to provide ABA (hereinafter  
11           Applied Behavioral Analysis) within the home setting for a minimum of ten  
12           hours per month.

13           F. Defendant will provide a individual trainer within the home/community  
14           setting, trained in "ABA", for a minimum of ten hours per week during the  
15           2004/2005 school year including extended school year services.

16           G. Defendant will provide Plaintiff eight hours of occupational therapy within  
17           the home environment.

18           H. Defendant will provide at least 90 minutes of direct speech/language  
19           services to Plaintiff within the school environment.

20           I. Defendant will provide the above relief within 20 school days from the date  
21           of the Order.

22           21. On or about December 10, 2004 Plaintiffs attended an Individualized  
23           Educational Plan (hereinafter "IEP") to commence implementation of the IHO  
24           Order dated December 6, 2004. Defendants represented an intent to  
25           implement the above referenced Order and ergo no intent of further appeal.

26           22. On or about December 10, 2004, an Individualized Education Plan (hereinafter  
27           "IEP") was scheduled for January 19-20, 2005.

28           23. On or about December 17, 2004, Plaintiffs' submitted a request for  
                  reasonable attorneys' fees and costs in the amount of \$70,889.00

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- 1 24. On or about December 17, 2004, Plaintiffs' submitted to Defendant a
- 2 detailed accounting of reasonable attorney fees and costs and requested
- 3 reimbursement pursuant to their prevailing party status.
- 4 25. As of January 05, 2005, Plaintiffs have heard no response from Defendants.
- 5

#### **CLAIM FOR RELIEF**

7 Wherefore, Plaintiffs' respectively request that the Court:

- 8 26. Plaintiffs repeat and allege each and every allegation contained in
- 9 paragraphs 1 through 25 as it fully set forth herein.
- 10 27. Plaintiffs have incurred attorneys' fees and costs for the amount of
- 11 \$70,889.00 for pursuing this cause of action.
- 12 28. Plaintiffs' attorneys fees and costs continue to incur.
- 13 29. Pursuant to Title 20 United States Code Section 1415(i)(3), this Court may
- 14 award reasonable attorneys' fees to the prevailing party bringing action
- 15 under Title 20 United States Code Section 1400 et. seq.
- 16 30. CESAR and JOCELYN RECIO are prevailing parties in this matter, as is
- 17 adjudicated in the Impartial Hearing Officer's Decision "IHO" dated
- 18 December 6, 2004 are statutorily entitled to recover the reasonable
- 19 attorneys' fees and costs associated with preparing for the underlying
- 20 administrative action, representation during the administrative hearing, and in
- 21 filing and pursuing this complaint as provided for by Title 20 United States
- 22 Code Section 1415(i)(3).

#### **PRAYER FOR RELIEF**

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25 Wherefor, Plaintiffs respectively request that the Court:

- 26 31. Assume jurisdiction over this case;
- 27 32. Award Plaintiffs' counsel reasonable attorneys' fees and costs for the
- 28 representation in this matter, as well as reasonable attorneys' fees and costs

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#### **PLAINTIFFS' COMPLAINT FOR ATTORNEYS' FEES AND COSTS**

1       according to proof, for the efforts to obtain these sums from Defendant,  
2       including fees and costs associated with bringing this action; and,  
3       33. For any other relief as the Court deems appropriate.

6 Dated: January 04, 2005

The Law Offices of Marianne C. Lanuti

By:

MARIANNE C. LANUTI, Esq.

*Attorney for Plaintiffs.*

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